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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,092	01/16/2004	Gilles Belot	85382-102 RWD	5266

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CANADA

EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,092	Applicant(s) BELOT, GILLES	
	Examiner Harry A. Grosso	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10 and 21-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,21 and 23-30 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher (4,943,002) in view of Treu (6,662,464).
3. Regarding claims 1, 5 and 6, Fraher discloses a container (10, Figure 1) in combination with a shovel (29), the container having a base portion (14), lid (15) and a scoop opening in the base sized to receive the scoop of the shovel (Figure 1, column 2, lines 9-15 and 43-50).

Fraher does not teach the use of a flexible gate across the scoop opening. Treu discloses a trash container with an opening for inserting an implement and the opening has a gate member comprising bristles to clean particles from the implement when it is pulled from the container (Figures 1-5, column 4, lines 5-14 and 26-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a gate member comprising bristles as disclosed by Treu in the container disclosed by Fraher to clean particles from the shovel when it is pulled from the container.

Regarding claim 7, Fraher discloses a shelf projecting outward below the scoop opening (40, Figure 2, column 3, lines 25-34).

4. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher and Treu as applied to claim 1 in view of Luescher, of record.

5. Fraher and Treu disclose the invention except for the access slot between the seam and the scoop opening. Luescher discloses an access slot created by extending scoop opening to the seam with the lid to allow the handle of the shovel to be extended through the opening without disturbing the shovel contents (Figure 1). The flexible gate bristles can be attached on the sides of the opening to engage the scoop as it is pulled through the opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an access slot created by extending scoop opening to the seam with the lid as disclosed by Luescher in the container disclosed by claim 1 to allow the handle of the shovel to be extended through the opening without disturbing the shovel contents.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher and Treu as applied to claim 1 in view of Hisamitsu, of record. Fraher and Treu disclose the invention except for the use of a receptacle for the scoop. Hisamitsu discloses a container with an open top receptacle on the outer side of the wall for holding a scoop (10, Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an open top receptacle on the outer side of the wall for holding a scoop as disclosed by Hisamitsu in the container disclosed in claim 1 to provide a means of storing the scoop and keeping it with the container.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher and Treu as applied to claim 1 in view of Light (5,222,704). Fraher and Treu disclose the invention except for a liner hanger. Light discloses a hanger (10, Figures 1 and 2, column 3, lines 43-46) that can be attached to the top of the wall of the base section and support a liner. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a hanger that can be attached to the top of the wall of the base section as disclosed by Light in the container disclosed in claim 1 to support a liner inside the container.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher and Treu as applied to claim 1 in view of Culling, of record. Fraher and Treu disclose the invention except for the bottom wall formed of an insulated fireproof material. Culling discloses a container with surrounding walls and a scoop opening in the wall and a bottom wall (base) made of concrete, which is fireproof and provides insulation (lines 45-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a bottom wall made of concrete as disclosed by Culling in the container disclosed in claim 1 because it is fireproof and provides insulation.

9. Claims 21 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher in view of Luescher. Fraher discloses a container (10, Figure 1) in combination with a shovel (29) having an elongated handle and a scoop (28), the container having a base portion (14), lid (15) and a scoop opening in the base sized to receive the scoop of the shovel (Figure 1, column 2, lines 9-15 and 43-50).

Fraher does not teach the access slot between the seam and the scoop opening. Luescher discloses an access slot created by extending scoop opening to the seam with the lid to allow the handle of the shovel to be extended through the opening without disturbing the shovel contents (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an access slot created by extending scoop opening to the seam with the lid as disclosed by Luescher in the container disclosed by Fraher to allow the handle of the shovel to be extended through the opening without disturbing the shovel contents.

10. Claims 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher and Luescher as applied to claim 21 in view of Treu. Fraher and Luescher disclose the invention except for the flexible gate formed of a plurality of bristles fully spanning the scoop opening and the access opening. Treu discloses a trash container with an opening for inserting an implement and the opening has a gate member comprising bristles to clean particles from the implement when it is pulled from the container (Figures 1-5, column 4, lines 5-14 and 26-28). The flexible gate bristles can be attached on the sides of the scoop and access opening to fully span the openings from the periphery. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a gate member comprising bristles as disclosed by Treu in the container disclosed in claim 21 to clean particles from the shovel when it is pulled from the container.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher and Luescher as applied to claim 21 in view of Culling. Fraher and Luescher disclose

the invention except for the bottom wall formed of an insulated fireproof material. Culling discloses a container with surrounding walls and a scoop opening in the wall and a bottom wall (base) made of concrete, which is fireproof and provides insulation (lines 45-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a bottom wall made of concrete as disclosed by Culling in the container disclosed in claim 21 because it is fireproof and provides insulation.

12. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraher in view of Culling, Luescher, and Treu.

Fraher discloses a container (10, Figure 1) in combination with a shovel (29) having an elongated handle and a scoop (28), the container having a base portion (14), lid (15) and a scoop opening in the base sized to receive the scoop or the shovel (Figure 1, column 2, lines 9-15 and 43-50).

Fraher does not teach a floor formed of an insulated fireproof material. Culling discloses a container with surrounding walls and a scoop opening in the wall and a floor made of concrete, which is fireproof and provides insulation (lines 45-51). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a floor made of concrete as disclosed by Culling in the container disclosed by Fraher because it is fireproof and provides insulation.

Fraher does not teach an access opening between the seam and the scoop opening. Luescher discloses an access opening created by extending scoop opening to the seam with the lid to allow the handle of the shovel to be extended through the

opening without disturbing the shovel contents (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an access opening created by extending scoop opening to the seam with the lid as disclosed by Luescher in the container disclosed by Fraher to allow the handle of the shovel to be extended through the opening without disturbing the shovel contents.

Fraher does not teach the use of a flexible gate across the scoop opening. Treu discloses a trash container with an opening for inserting an implement and the opening has a flexible gate member comprising bristles to clean particles from the implement when it is pulled from the container (Figures 1-5, column 4, lines 5-14 and 26-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a gate member comprising bristles as disclosed by Treu in the container disclosed by Fraher to clean particles from the shovel when it is pulled from the container.

Allowable Subject Matter

13. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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